

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-218113

DATE: February 6, 1985

MATTER OF: Federal Employees Metal Trades Council,
Save Our Jobs Committee

DIGEST:

1. Determination under Office of Management and Budget Circular No. A-76 to contract for services rather than have them performed in-house is a matter of executive branch policy not reviewable pursuant to a bid protest filed by a union local representing federal employees.
2. Protest may be dismissed where protester failed to submit most of the specific information required to be included in a submission under GAO bid protest regulations.

The Federal Employees Metal Trades Council, Save Our Jobs Committee, protests the award of a contract to Reliable Trash Services for refuse collection and disposal services at Fort Benning, Georgia. We dismiss the protest.

This protest involves a challenge to an agency's determination under Office of Management and Budget Circular No. A-76 to contract for services rather than perform them in-house. The protester, representing a group of federal wage grade employees, states that a prior contract for refuse services at Fort Benning called for the services to be performed by an outside contractor using government-owned equipment. Under the current contract being challenged by the protester, the services are to be performed by an outside contractor using its own, different equipment. The protester maintains that, because of the change in the type of equipment being used, the agency was required to conduct a new cost study before deciding to contract for the services.

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Our Office has repeatedly declined to render decisions concerning the propriety of an agency's determination under Circular A-76 to contract for services instead of performing the work in-house. These determinations are beyond the scope of our bid protest decision function because the provisions of the Circular are matters of executive branch policy which do not create legal rights or responsibilities. See Local F76, International Association of Firefighters, B-194084, Mar. 28, 1979, 79-1 CPD ¶ 209.

We do, however, consider it detrimental to the competitive system for the government to decide to award or not award a contract based on a cost comparison analysis that did not conform to the terms of the solicitation under which the bids were submitted. See Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD ¶ 38. For that reason we do entertain protests which allege faulty or misleading cost comparisons of in-house estimates with bids received. See Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 CPD ¶ 317. Even in those cases, however, our review is intended only to protect the parties that competed from the arbitrary rejection of their bids; our review does not extend to protests by non-bidders such as federal employees or union locals that represent federal employees. Hawaii Federal Lodge No. 1998, International Association of Machinists and Aerospace Workers, B-214104, Jan. 23, 1984, 84-1 CPD ¶ 109. Similarly, our new bid protest regulations provide that protests may be filed only by an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. See GAO Bid Protest Regulations, §§ 21.0(a) and 21.1(a), 49 Fed. Reg. 49,417-49,423 (1984). It appears from the face of the protest that the protester here is not a bidder and thus is not eligible to file a protest.

Moreover, the protester has failed to submit most of the information required to be included in a submission under our regulations. Specifically, the protester does not identify the number of the solicitation or contract being challenged; request a ruling by the Comptroller General; state the form of relief it requests; or indicate its own telephone number, all items required by section 21.1(c) of our

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regulations to be included in a protest filed with our Office. In addition, the protest does not indicate that a copy has been furnished to the contracting agency, as required by section 21.1(d). Under section 21.1(f) of our regulations, a protester's failure to comply with these requirements constitutes grounds for dismissing its protest.

The protest is dismissed.


for the Comptroller General
of the United States